

Message Text

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SUBJECT: SUPREME COURT RULES ON THE LAW AND LUIS CORVALAN

REFS: A) STATE 242082; B) SANTIAGO 6677

1. SUMMARY: CHILEAN SUPREME COURT HAS REJECTED HABEAS CORPUS PETITION FOR COMMUNIST PARTY HEAD LUIS CORVALAN, UPHOLDING LEGITIMACY OF JUNTA'S CONSTITUENT AND LEGISLATIVE ACTS AND AGAIN CITING ITS LACK OF JURISDICTION OVER CASES OF PERSONS DETAINED UNDER STATE OF SIEGE. END SUMMARY.

2. WIFE OF LUIS CORVALAN, SEC GEN OF OUTLAWED CHILEAN COMMUNIST PARTY (PCCH), FILED HABEAS CORPUS PETITION ("AMPARO") WITH SANTIAGO APPEALS COURT IN SEPTEMBER 1975, PROTESTING ILLEGALITY OF HIS DETENTION BY GOC SINCE SEPTEMBER 1973. PETITION CONTAINED SEVERAL CHALLENGES ON TECHNICAL GROUNDS TO LEGALITY OF USE OF EMERGENCY POWERS BY JUNTA.

3. APPEALS COURT ON OCTOBER 3 RULED AGAINST CORVALAN. IT DISMISSED CLAIM THAT CORVALAN WAS PROTECTED AT TIME OF ARREST BY CONGRESSIONAL IMMUNITY (CORVALAN WAS SENATOR), AS HE WAS ARRESTED THREE DAYS

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AFTER CONGRESS HAD BEEN OFFICIALLY DISSOLVED/ COURT ALSO HELD

THAT CORVALAN WAS AND IS HELD UNDER CONSTITUTIONAL POWERS OF PRESIDENT DURING STATE OF SIEGE, AND SUCH POWERS HAVE BEEN LEGALLY EXERCISED THROUGH JUNTA. HOWEVER, IT LEFT OPEN A QUESTION ON "AMPARO" APPLICATION, AND DECISION WAS IMMEDIATELY APPEALED TO SUPREME COURT.

4. ON OCTOBER 10 SUPREME COURT (ENTIRE COURT NOT SITTING), RULED THAT APPEALS COURT DECISION WAS CORRECT. FINDING (AS REPORTED BY PRESS) INCLUDED DISCUSSION OF "AMPARO" PETITION'S CHALLENGES TO LEGALITY OF DECREE LAWS UNDER WHICH JUNTA HAS EXERCISED CONSTITUTIONAL POWER OF PRESIDENT TO DETAIN PERSONS UNDER STATE OF SIEGE PROVISIONS. SUMMARY OF COMPLEX FINDING IS THAT JUNTA (AND BY IMPLICATION PRESIDENT PINOCHET, SINCE JUNTA GAVE HIM THAT OFFICE) WAS AND IS LEGAL GOVERNMENT, AND ITS DECREE LAWS HAVE FORCE OF AMENDMENTS WHERE THEY CONFLICT WITH CONSTITUTION.

5. SUPREME COURT RULING AS CARRIED IN PRESS MADE EVIDENT IN INDIRECT MANNER THAT COURT CONTINUES TO MAINTAIN VIEW THAT IT HAS NO AUTHORITY TO INTERVENE WITH "AMPARO" IN CASES OF DETENTIONS BY GOC UNDER STATE OF SIEGE PROVISIONS.

6. IN COURSE OF ADDRESS TO LAW SCHOOL OF UNIV OF CHILE ON OCTOBER 13, PRESIDENT OF SUPREME COURT EYZAGUIRRE MADE POINT ON "AMPARO" CLEAR ONCE AGAIN, WITHOUT SPECIFIC MENTION OF CORVALAN CASE. EYZAGUIRRE SAID THAT GOC EXECUTIVE BRANCH ACTIONS UNDER STATE OF SIEGE PROVISIONS ARE SOLELY A PRESIDENTIAL RESPONSIBILITY (AND THUS IMPLICITLY NOT SUBJECT TO CONTROL BY COURTS).

7. HOWEVER, EYZAGUIRRE ALSO SAID THAT IT WOULD BE WELL IF SUPREME COURT COULD REVIEW SENTENCES OF MILITARY TRIBUNALS TO ENSURE UNIFORMITY OF APPLICATION OF THE LAW AND OF PENALTIES ". . . BECAUSE THERE ARE BETTER GUARANTEES FOR ACCUSED AND THEIR DEFENSE WHEN IT IS AN ORDINARY CIVIL TRIBUNAL WHICH REVIEWS THE FINDINGS OF MILITARY TRIBUNALS."

8. COMMENT: CORVALAN THUS REMAINS UNDER DETENTION IN RITOQUE CAMP WHILE FACING NAVY TRIAL IN VALPARAISO. FEELINGS OF SUPREME COURT PRESIDENT IN GENERAL MATTER OF "AMPARO" AND CIVILIAN REVIEW, WHICH ARE KNOWN TO BE AMBIGUOUS, ARE ACCURATELY LIMITED OFFICIAL USE

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REFLECTED IN HIS LAW SCHOOL REMARKS. HE CONCEDES INABILITY OF CIVIL COURTS TO INTERVENE IN STATE OF SIEGE DETENTIONS AND IN MILITARY JUSTICE SYSTEM UNDER TIME OF WAR CONDITIONS (ALTHOUGH HE HAS VOTED IN MINORITY IN FAVOR OF ASSERTING SUPREME COURT JURISDICTION OVER MILITARY TRIBUNALS), BUT MAKES CLEAR HIS BELIEF THAT GOC SHOULD PERMIT AT LEAST A LIMITED ROLE IN THE MATTER. POPPER

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